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In The

Supreme Court of the United States

October Term, 1974

No. 74-55

GENE DAVID CLAY,

Petitioner.

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO GRANT OF CERTIORARI

QUESTIONS PRESENTED

I.

Does Miranda v. Arizona Apply To The General On The Scene Questioning During The Investigation Of Traffic Accidents?

II.

Does Miranda v. Arizona Apply Where A Person Is Charged With A Misdemeanor?

STATEMENT OF THE CASE

The respondent accepts the statement of the case as set forth by petitioner, except that in clarification respondent

would point out that the questions asked the petitioner were asked in the context of investigating the traffic accident (T. 22, 36).

For further clarification it is pointed out that it was not until after petitioner had made the statements in question that it was first learned that petitioner was subject to a felony charge (T. 37).

ARGUMENT AGAINST GRANTING CERTIORARI

I.

Miranda v. Arizona Was Not Applicable To The General On The Scene Questioning During The Investigation Of The Traffic Accident.

This court made it clear in its decision in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), that the decision was "not intended to hamper the traditional function of police officers in investigating crime. . . . General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present." 384 U.S. at 477-78.

The thrust of *Miranda* and its forerunner *Escobedo* v. *Illinois*, 378 U.S. 478 (1964), was to prevent law enforcement authorities from placing defendants in an interrogation environment where physical and psychological pressures could be exerted in an effort to elicit incriminating statements. This was made plain where the court in *Escobedo, supra*, said:

> "We hold only that when the process shifts from investigatory to accusatory—when its focus is on the ac-

> cused and its purpose is to elicit a confession—our adversary system begins to operate, and, under the circumstances here, the accused must be permitted to consult with his lawyer." 378 U.S. at 492.

In the present case the questions which were asked by the state trooper, and which are the subject of this petition, were patently of a neutral character and the same as are universally asked at the scene of every motor vehicle accident. The trooper simply asked the defendant who he was and what happened (T. 22, 36). To characterize these questions as being encompassed within the ambit of *Miranda* would be to stretch that decision out of perspective.

The case of *State* v. *Desjardins,* 272 A.2d 599 (N.H. 1970), is factually similar to the case at bar. There the defendant was convicted of driving while under the influence of intoxicating liquor, following an accident. The facts showed that upon approaching the scene of the accident, the investigating officer first saw the defendant standing outside the vehicle on the driver's side and two other persons standing outside on the opposite side of the vehicle. The defendant smelled of alcohol, was bleeding from two lacerations about the eyebrows, appeared drunk, and was arrested by the officer for drunkenness. The defendant was then asked if he was the driver of the vehicle, without being warned of his right to remain silent or his right to have counsel. The defendant, without these warnings, admitted that he was. The officer then arranged to have the defendant transported to the hospital for medical treatment and blood tests while he, the arresting officer, returned to the station to swear out a warrant against the defendant for driving while under the influence. The facts further showed that no evidence beyond the testimony of the arresting officer was introduced to show that defendant was the operator of the vehicle.

In disposing of defendant's argument that the officer's testimony was inadmissible under *Miranda*, the New Hampshire Supreme Court stated:

> ". . . [S]o far as appears the officer's inquiry if he was the driver was part of a 'general on-the-scene questioning' in investigation of the accident of the sort which *Miranda* was not intended to impede. . . . The circumstances disclosed bear none of the hallmarks of inherently coercive police practices calculated to produce an involuntary confession." 272 A.2d at 602.

In conclusion the New Hampshire Supreme Court ruled as follows:

> "Upon consideration of the nature of the offense of which the defendant was charged when questioned, and the fact that the evidence objected to was obtained in the course of a routine on-the-scene investigation of a motor vehicle accident, we are of the opinion that the principles of *Miranda* v. *Arizona* did not require exclusion of the officer's testimony." 272 A.2d at 602.

For similar holdings see *People* v. *Jendrzejak*, 240 N.E. 2d 239 (Ill. App. 1968); *Ford* v. *State*, 226 So.2d 378 (Miss. 1969); *State* v. *Hayes*, 161 S.E.2d 185 (N.C. 1968); *State* v. *Taylor*, 437 P.2d 853 (Ore. 1968). See also the cases compiled in the Annotation in 31 A.L.R.3d 565 (1970).

It is submitted that *Miranda* was not intended to extend to the routine, initial, on-the-scene investigation by police. For it to apply in such circumstances would amount to an unwarranted constitutional straight jacket on law enforcement.

II.

Miranda v. Arizona Does Not Apply Where A Person Is Charged With A Misdemeanor.

At the time defendant made the statements in question he was at most chargeable with driving under the influence (T. 37). This charge is set forth in § 18.1-54, Code of Virginia (1950), and is punishable as a misdemeanor. See § 18.1-58, Code of Virginia (1950). These two code sections are set forth in full in the Appendix to the Petition for Certiorari at pages 25 and 33.

Courts in numerous states have previously held that *Miranda* is not applicable to cases involving misdemeanors. See *State* v. *Angelo*, 203 So.2d 710 (La. 1967); *State* v. *Bliss*, 238 A.2d 848 (Del. 1968); *State* v. *Pyle*, 249 N.E.2d 826 (Ohio 1969), *cert. denied* 396 U.S. 1007; *State* v. *Gabrielson*, 192 N.W.2d 792 (Iowa 1971), *cert. denied* 396 U.S. 920; *State* v. *Neal*, 476 S.W.2d 547 (Mo. 1972). See also the cases compiled in the Annotation in 25 A.L.R.3d 1076 (1969).

The fundamental reason for the *Miranda* rule simply is not present in the investigation of misdemeanors and particularly the investigation of motor vehicle offenses. Nearly all of the interrogation occurs at or near the scene of the violation and not in a coercive atmosphere created by law enforcement officials. The practical effect of a ruling requiring *Miranda* to be complied within misdemeanor cases and particularly traffic offenses, would be to substantially impair, if not destroy, the effectiveness of our system of investigating minor crimes.

CONCLUSION

It is respectfully submitted that *Miranda* was never intended to apply to the general on-scene questioning involved in this case, nor was it intended to be applied in cases involving misdemeanors.

Wherefore, respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, James E. Kulp, Assistant Attorney General of Virginia, counsel for the respondent in the captioned matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on or before the 21st day of November, 1974, I mailed three copies of the foregoing Brief in Opposition to Henry W. McLaughlin, Jr., Esquire, Court House Square, Halifax, Virginia 24558, counsel of record for petitioner.

JAMES E. KULP
Assistant Attorney General